

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. L-09/09-520
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department for Disabilities, Aging and Independent Living (DAIL) terminating her eligibility for participation in the Choices for Care (CFC) program. The issue is whether DAIL's decision to terminate CFC eligibility is correct under the regulations.

A telephone status conference was held on November 9, 2009. The parties indicated that the basic facts are not in dispute, and that the matter could be decided on the basis of written arguments, which the parties have filed.

FINDINGS OF FACT

1. The petitioner first entered CFC in 2006 following a stay in a nursing home. At the time she required rehabilitation services and extensive assistance with bathing and dressing. Her condition has improved over time.

2. Prior to petitioner's most recent reassessment, (which concluded with a Commissioner's Review decision dated June 30, 2009) DAIL had granted petitioner a continuation of

CFC services due to her daily need for physical assistance with bathing and dressing. Presently the petitioner receives 6 hours per week of homemaker services and 0.75 hours a week of physical assistance with bathing and dressing.¹

3. When the petitioner submitted a reassessment request earlier this year it was noted that she needed only limited assistance with washing her back during bathing and putting on her socks.

4. Based on this assessment DAIL has determined that the petitioner is only eligible for 6 hours of homemaker services under its "moderate needs" program. According to the petitioner, the termination of the 0.75 hours a week for assistance with bathing and dressing, which qualified her for CFC, means that her homemakers will not be "permitted" to help her with those activities while they are in her home. The petitioner alleges that she presently washes her back three times a week to coincide with the homemakers' visits to her home.

5. There is no evidence or allegation that the petitioner has a *medical* need for personal assistance to wash her back and put on socks on a daily basis, or that she couldn't do this herself with a mechanical aid.

¹ This level of service has continued pending the outcome of this appeal.

ORDER

The Department's decision to terminate petitioner's eligibility for the CFC program is affirmed.

REASONS

DAIL operates the Choices for Care (CFC) program through a waiver from the Centers for Medicare and Medicaid Services. The primary goal of the CFC program is to provide individuals who need *nursing home level* care with a choice of remaining in the community by providing home health care for Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). CFC Regulations Section I.

The eligibility criteria are set out at CFC Regulations Section IV. Section IV.A.2 states that to be eligible:

. . . an individual must have a functional physical limitation resulting from a physical condition (including stroke, dementia, traumatic brain injury, and similar conditions) or associated with aging.

DAIL has created categories of need including Highest Needs and High Needs. The issue in this case is whether DAIL is correct under the regulations that petitioner no longer

meets the eligibility criteria for the Highest or High Needs groups.²

In terms of the Highest Needs Group, CFC Regulation Section IV.B.1.b states, in part:

Individuals who apply and meet any of the following eligibility criteria shall be eligible . . .

- i. Individuals who require **extensive or total assistance** with at least one of the following Activities of Daily Living (ADLs): toilet use, eating, bed mobility; or transfer, and require *at least* limited assistance with any other ADL. (emphasis added.)

In terms of the High Needs group, CFC Regulation Section IV.B.2.b states:

Individuals who meet any of the following eligibility criteria shall be eligible for the High Needs group and may be enrolled in the High Needs group:

- i. Individuals who require **extensive to total assistance on a daily basis** with at least one of the following ADLs:

Bathing	Dressing
Eating	Toilet Use
Physical Assistance to Walk	
(emphasis added.)	

The Board has held that an individual requiring only limited assistance with the above ADLs does not meet the criteria in the above regulations. See e.g. Fair Hearing No. A-11/08-522. Inasmuch as it is clear from the undisputed

²As noted above, the petitioner has been found eligible for homemaker services under Moderate Needs.

evidence that the Department's decision in this matter is in accord with the above provisions, its decision to terminate petitioner's eligibility for CFC services must be affirmed.
3 V.S.A. § 3091(d), Fair Hearing No. 1000.4(D).

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